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**THIS DISPOSITION
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Paper No. 11
CEW

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Melanie Mitchell

Serial No. 74/688,995

Stephen E. Baldwin of Trial & Technology Group for
applicant.

Raul Cordova, Trademark Examining Attorney, Law Office 108
(David Shallant, Managing Attorney).

Before Simms, Quinn and Walters, Administrative Trademark
Judges

Opinion by Walters, Administrative Trademark Judge.

Melanie Mitchell has filed a trademark application to
register the mark THE LITTER SIFTER for "cat litter
scoops."¹ Applicant has disclaimed LITTER apart from the
mark as a whole.

The Trademark Examining Attorney has finally refused
registration under Section 2(e)(1) of the Trademark Act, 15

¹ Serial No. 74/688,995, in International Class 21, filed June 14, 1995,
based on an allegation of a bona fide intention to use the mark in
commerce

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U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of its goods.

Applicant has appealed. Both the applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

The Examining Attorney contends that the goods are used to sift through litter in a cat's litter box, i.e., the goods are "a sifter used in cat litter"; and that the combination of these two descriptive terms does not create a registrable trademark, as there arises no incongruity or new significance from this combination of terms. In support of his position, the Examining Attorney submitted a dictionary definition of SIFT as "v-tr. 1. To put through a sieve or other straining device in order to separate the fine from the coarse particles. - sifter n."²; a copy of third-party Registration No. 1,715,841, wherein the goods are identified as "combination plastic litter liner and waste *sifter* for cat-litter boxes" (*emphasis added*), and excerpts from the LEXIS/NEXIS database of two articles wherein the term SIFT appears, in relation to cat litter boxes, as follows:

The Columbus Dispatch, May 19, 1996:

Shaking the pans like a prospector sifting for gold, a cat owner can separate the litter from the, well, you know, and finish the daily chore

² *The American Heritage Dictionary*, 2nd College Edition

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Kelli Correll . . . displayed her "Kitty Kat Litter-Saver-Sifter" in booth 106. Kelli's invention also works on the lift-and-sift principle.

The Pooper Mate is also a sifter, but its box is lifted and sifted by stepping on a lever.

Advertising Age, June 27, 1988:

Litter Sifters of the Rich: For a very large fee, we'll send one of our employees to clean your kitty's litter box.

Applicant contends, on the other hand, that her mark is at most suggestive, that the Examining Attorney's evidence is inapposite as it contains no instances of the use of cat litter scoops or of the identical mark, THE LITTER SIFTER, used in connection with cat litter scoops; that "scoop" not "sifter" is the common term used to describe goods of the type identified in this application; and that the goods described in the third-party registration and articles submitted by the Examining Attorney are different devices than cat litter scoops, which are goods requiring a scooping motion, rather than sifting.

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of a product or service. *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979), *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986). It is not necessary, in order to find a mark merely descriptive,

that the mark describe each feature of the goods, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

With respect to the present case, we note, first, the dictionary definition of scoop as "n. a shovel-like utensil, usu. having a deep curved bowl and a short handle. vt. 1. to take up or dip into with or as if with a scoop."³ The evidence clearly indicates that both scoops and sifters allow the user to clean waste from the litter in cat litter boxes without having to change the entire box of litter; and that the functional differences between these two categories of devices are minimal. Even with a scoop, the user will have to first use the scoop to sift through the litter to find the objects to be scooped out. It is reasonable to conclude that a cat litter scoop may perform a sifting function and is, thus, a "litter sifter" as well as a "litter scoop." Further, especially as this is an intent-

Webster's II, New Riverside University Dictionary, 1984

to-use application with no evidence regarding the nature of the goods other than the identification of goods, the identification of goods, "cat litter scoops," is sufficiently broad to encompass a variety of devices for cleaning waste from cat litter boxes, including sifters that both find and remove waste through a sifting action. We conclude, therefore, that the phrase THE LITTER SIFTER merely, and clearly, describes the nature and function of applicant's goods. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's goods to readily perceive the merely descriptive significance of the phrase THE LITTER SIFTER as it pertains to applicant's goods.

Decision: The refusal under Section 2(e)(1) of the Act is affirmed.


R. L. Simms


T. J. Quinn



C. E. Walters
Administrative Trademark Judges,
Trademark Trial and Appeal Board

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